

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROY A. SUTTON</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>HIGGINS STONE COMPANY</b>	)	
Respondent	)	Docket No. 1,003,447
	)	
AND	)	
	)	
<b>UNKNOWN</b>	)	
Insurance Carrier	)	
	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION</b>	)	
<b>FUND</b>	)	

**ORDER**

Respondent requested review of the March 2, 2006, preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.<sup>1</sup>

**ISSUES**

The Administrative Law Judge (ALJ) found that claimant suffered an accidental injury to his back arising out of and in the course of his employment with respondent. Accordingly, the ALJ ordered the Workers Compensation Fund (Fund) to pay for medical treatment with Dr. Glenn Amundson and to pay temporary total disability benefits commencing May 13, 2005, minus amounts previously paid, until further order or until claimant is certified as having reached maximum medical improvement (MMI), released to return to regular work, or returned to gainful employment. Certain past medical expenses, prescription drug expenses, and medical mileage were also ordered paid by the Fund.

Respondent argues that the credible medical evidence does not support claimant's allegations that his back and neck problems are causally related to his 2001 injury.

---

<sup>1</sup> Claimant's application for hearing and notice of hearing included a request for penalties. The ALJ's order did not address that issue.

Therefore, respondent requests that the ALJ's Order authorizing temporary total disability benefits and payment of medical treatment be reversed.

Claimant objects to review of this preliminary Order for Compensation, claiming that respondent has no reasonable basis to allege that the ALJ exceeded his jurisdiction in entering the order. In the event the Board does not dismiss this appeal as lacking in jurisdiction, the claimant contends that the ALJ's findings are founded on credible evidence and the Order For Compensation should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant was employed by respondent as a heavy equipment operator. On August 3, 2001, claimant slipped and fell, injuring his left shoulder and left knee. Claimant had rotator cuff surgery on his left shoulder in September 2002 and returned to light-duty accommodated work from December 12, 2002 to February 28, 2003. In April 2003, claimant had surgery on his left knee. Dr. Joseph Mumford released him to return to work on May 13, 2005.

During the time claimant was back at work at respondent from December 2002 to February 2003, claimant injured his right knee while walking on uneven terrain. He filed a workers compensation claim for that injury to his right knee, and that claim was settled on September 7, 2004.

Claimant is now claiming injuries to his neck and back. He admits that no doctor had provided him medical treatment to his neck or back, other than possibly Dr. Mumford may have sent him to physical therapy in December 2004 or January 2005. Before that time, he had never had any treatment for his neck or back, although he claims he complained of symptoms in those areas. Dr. Edward Wood's report of August 15, 2001, describes claimant's injuries from the work-related accident and indicates he complained "he wrenched his neck at the same time, and he is concerned about trauma there. His left shoulder, neck, and back seem to be most severe."<sup>2</sup>

Dr. John Gilbert's medical records of September 21, 2001, state:

[Claimant] is . . . seen today for evaluation of injuries to his left shoulder, upper and lower back, and left knee. He reports that about six weeks ago, he was working on a 977 loader, got out on the gear box which had a little oil on it, he slipped and fell sustaining injuries to his shoulder and knee. He's had persistent complaints of pain in his upper and lower back since that time as well. . . .

---

<sup>2</sup>P.H. Trans. (July 23, 2002), Cl. Ex. 3 at 10.

... [Claimant] describes pain in the upper and lower back which likewise has been persistent and is aggravated by activities at work.”<sup>3</sup>

Dr. Mumford’s records of November 6, 2001, note: “Most troubling today is increasing nonradicular low back pain.”<sup>4</sup>

However, Dr. Mumford’s letter to respondent’s attorney dated November 30, 2005, states:

[Claimant] has been evaluated for some spinal stenosis. Reviewing my notes, I note initial documentation of his back pain in May of 1993, following a rear end motor vehicle accident. I think the spinal stenosis is a natural process of the aging skeleton, and the first documentation of aggravation of this process was in May of 1993.<sup>5</sup>

Claimant was examined by Dr. Sergio Delgado on March 31, 2005, at the request of respondent. Dr. Delgado’s records indicate: “[I]t is my opinion that complaints related to the back and the left knee are from degenerative disease which has been longstanding and not work related.”<sup>6</sup>

Claimant was examined by Dr. Peter Bieri on June 10, 2005, at the request of his attorney. His report of that date notes: “[Claimant’s] low back is persistently painful, primarily localized to the lumbar spine region. The claimant originally had some neck complaints, which have resolved.”<sup>7</sup>

The ALJ ordered an independent medical examination by Dr. Glenn Amundson, which was performed on December 28, 2005. Dr. Amundson’s report contains his conclusion that

[Claimant] has a mobile spondylolithesis at L4-5. He has spinal stenosis at L3-4 and L4-5. The patient has cervical complaints . . . I think the patient demonstrates multiple Waddle’s findings consistent with chronic illness behavior and symptom magnification, most likely due to the four years of chronic pain.<sup>8</sup>

---

<sup>3</sup>*Id.*, Cl. Ex. 1 at 11.

<sup>4</sup>*Id.*, Cl. Ex. 1 at 4.

<sup>5</sup>P.H. Trans. (Mar. 2, 2006), Resp. Ex. B.

<sup>6</sup>*Id.*, Resp. Ex. D at 2.

<sup>7</sup>*Id.*, Resp. Ex. C at 4.

<sup>8</sup>*Id.*, Cl. Ex. 1 at 11.

Dr. Amundson saw claimant again on February 20, 2006. At that time, Dr. Amundson made the following comment concerning his review of claimant's past medical records:

I have obtained hints throughout the review of the medical record, and went through documentation, that his supposition that his neck and low back complaints were all deferred while he was undergoing evaluation and treatment that eventually ended with bilateral total knee replacements and shoulder surgery, deferred his neck and low back complaints which were the originally registered complaints, along with those areas of anatomic injury with the on-the-job injury. I therefore opine that they are all work related.<sup>9</sup>

Claimant testified that in 2003 he worked at Hillmer's for four or five months repairing luggage. This required him to operate a sewing machine and to lift leather bags. He reported to the owner that his left shoulder gave him problems because he had to hand sew some luggage. He testified that this is what caused him to leave the job at Hillmers.

Claimant also stated that for a period of time in 2004, he drove a school bus for the Seaman school district. He testified that he had to quit driving the school bus because Dr. Mumford put him on desk duty only. Claimant also stated that he was unable to do bus inspections because it hurt his low back and his neck. He stated that this job made his symptoms worse, but he did not file a workers compensation claim against the school district.

Respondent raises an issue that goes to whether claimant's alleged back and neck injuries arose out of and in the course of his employment with respondent. Pursuant to K.S.A. 44-534a(a)(2), this issue is deemed jurisdictional and is subject to review by the Board on an appeal from a preliminary hearing order. Accordingly, claimant's objection to and motion to dismiss this appeal is denied.

Neither claimant nor any physician attributes claimant's back and neck symptoms to an intervening accident. The ALJ apparently found claimant credible, as he awarded benefits based upon his testimony and the medical opinion of Dr. Amundson. It is significant that claimant made complaints of neck and back pain for several months after his accident. However, it is also significant that the medical records do not document a continuation of those symptoms throughout the pendency of this claim. Nevertheless, it is true that for the most part the physicians focused their treatment on other areas. Based on the record presented to date, the Board finds claimant has met his burden of proving a direct causal connection between his present neck and back injuries and his August 3, 2001, accident.

---

<sup>9</sup>*Id.*, Cl. Ex. 1 at 1.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order For Compensation of Administrative Law Judge Brad E. Avery dated March 2, 2006, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2006.

\_\_\_\_\_  
BOARD MEMBER

c: Judy A. Pope, Attorney for Claimant  
Jeff K. Cooper, Attorney for Respondent  
Mark Works, Attorney for Kansas Workers Compensation Fund  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director